SUPREME COURT, U. S.

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No. 376

In The Supreme Court of The United States

October Term, 1969

AMALGAMATED TRANSIT UNION,
LOCAL DIVISION 1309 et al.,

Petitioner,

vs.

SAN DIEGO TRANSIT CORPORATION,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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CONSTITUTION

United States Constitution, Article III, §2 1

IN THE

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CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Respondent respectfully submits that a proper determination of the issues which form the basis of the petition requires, in addition to the constitutional and statutory provisions set forth by petitioner, consideration of United States Constitution Article III, §2, which

provides, in part:

> "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, [and] the Laws of the United States . . . . "

QUESTION PRESENTED

1. Where a party to a labor dispute files a complaint for injunctive relief and obtains thereby a preliminary injunction, is an appeal by the enjoined party from the preliminary injunction rendered moot if, pending the appeal, all parties to the action enter into an agreement which puts to rest all disputed matters which gave rise to the action?

STATEMENT OF THE CASE

On or about February 14, 1969, respondent San Diego Transit Corporation, which operates facilities for public transportation by bus in and about San Diego, California, received a letter from petitioner Amalgamated Transit Union, Local Division 1309, informing respondent that as of March 16, 1969, the bus drivers represented by that Union would no longer carry any cash, passes, tickets or tokens while operating respondent's busses. (Exhibit "A" to Complaint.) Respondent and petitioner Amalgamated Transit Union, Local Division 1309, are parties to a collective bargaining agreement effective August 1, 1967, through March 31, 1970, under the terms of which petitioner represents all bus

drivers employed by respondent. (Exhibit "2" to Petition For Removal.) Negotiations concerning initiation of a "Ready-Fare Plan" to relieve petitioner's drivers of this duty had been conducted between the parties over a period of several months prior to February 14, 1969. In spite of intensive negotiations, it became clear that respondent could not implement a "Ready-Fare Plan" by March 16, 1969. Respondent sought injunctive relief in the state court in order to avert mass confusion and inconvenience to the citizens of San Diego, California. (Complaint for Injunction filed March 12, 1969.) Upon reading the verified complaint, the state court directed petitioner to appear before the court on March 14, 1969, to show cause why a preliminary injunction should not be issued against such threatened unilateral action. On March 13, 1969, petitioner sought and obtained removal of the action to the United States District Court for the Southern District of California. (Petition For Removal.)

On March 14, 1969, the parties appeared before United States District Judge Fred Kunzel for hearing on respondent's order to show cause. After extensive argument the court, in the protection of the public interest, granted the preliminary injunction against petitioner's threatened unilateral action and respondent was ordered to file, and did file, a bond. (Appendix "A" to Petition for Writ of Certiorari pp. 18-21.) On that same date a Notice of Appeal was filed by petitioner.

On March 19, 1969, petitioner filed with the United States Court of Appeals for the Ninth Circuit a Motion for Stay Pending Appeal and that court directed the parties to appear before it on March 25, 1969, for oral argument on that motion. After hearing on that date,

the court took the motion under submission and directed the parties to keep the court advised of the progress of further negotiations between the parties.

Between March 25, 1969, and April 10, 1969, while petitioner's Motion for Stay Pending Appeal was under submission, extensive negotiations took place between petitioner and respondent with regard to adoption of a "Ready-Fare Plan" by respondent. These negotiations led to an agreement between the parties which instituted a "Ready-Fare Plan" for busses in and about San Diego, thus relieving petitioner's members from any duty to carry cash, passes, tickets or tokens on the busses. This agreement was ratified by the Board of Directors of respondent on April 8, 1969, and by the members of petitioner on April 10, 1969.

Pursuant to the court's request, respondent on April 14, 1969, filed in the Ninth Circuit Court of Appeals a Motion to Dismiss the appeal on the ground that the adoption of a "Ready-Fare Plan" rendered the appeal moot. Inasmuch as the complaint sought only an injunction, no effective relief could then be granted by the court. (Complaint for Injunction pp. 6-7.) Respondent's Motion to Dismiss was granted by the court on April 25, 1969. (Appendix "A" to Petition for Writ of Certiorari pp. 22-23.)

REASONS WHY WRIT SHOULD BE DENIED

I. THE DISMISSAL BY THE UNITED STATES COURT OF APPEALS CREATES NO CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT.

The Petition before this Court places great reliance upon an asserted conflict between the order of April 25, 1969, dismissing the appeal and Liner v. Jafco, Inc., 375 U.S. 301 (1964). Respondent respectfully submits that the conflict is more apparent than real.

In Liner, a state court had issued the injunction in a labor dispute and the state appellate court had held the appeal to be moot since construction on the job site had been completed. The writ of certiorari by the Supreme Court of the United States was then directed to the state appellate court after the state supreme court denied certiorari. Respondent submits that the import of the Liner case lies in the Court's refusal to allow state courts, by determining an appeal to be moot, to interfere with national labor policy. The opinion in Liner at page 306 so states. Further, respondent urges that it was for this reason that this Court found it necessary to decide that whether a matter is moot is, in itself, a federal question. The Court in Liner then concluded that under the facts present the case was not moot.

It is apparent at the outset that the case at bar is distinguished from Liner v. Jafco, Inc., supra, by the fact that the injunction in this action was issued by a federal court after removal from the state court and after full hearing. This order was left undisturbed by a federal appellate court. The case at bar involves no

possible interference with national labor policy, as did Liner v. Jafco, Inc., supra, and petitioner has already received a federal determination on its case. The petitioner Union places its position not upon an interference with national labor policy as in Liner, but rather upon its disagreement with the factual determination made by the United States Court of Appeals for the Ninth Circuit when it compared Liner v. Jafco, Inc. with the case at bar.

San Diego Transit Corporation urges that the conclusion of the court of appeals was required and appropriate when the facts of the case were tested in the light of the standard laid down in Liner v. Jafco, Inc., supra, Barker Co. v. Painters Union, 281 U.S. 462 (1930) and Dakota County v. Glidden, 113 U.S. 222 (1885). The only prayer before the court in this case was one for injunctive relief to prevent interference with an aspect of respondent's business which had been extinguished by agreement between the parties.

II. THE DAMAGES RECOVERABLE BY PETITIONER, IF ANY, FOR WRONGFUL ISSUANCE OF AN INJUNCTION ARE, IN ANY EVENT, UNSUBSTANTIAL.

Respondent obeyed the order of the United States District Court for the Southern District of California by filing a bond in the penal sum of $500.00. This bond is still in full force and effect as filed, no motion ever having been made by petitioner to increase the amount of the undertaking. Petitioner has urged both the United States Court of Appeals for the Ninth Circuit and this

Court to allow the present litigation to continue so that petitioner might recover its damages in the event it could obtain a determination that the injunction was wrongfully issued.

When it is recognized that if petitioner has any recovery it is limited to the amount of respondent's bond in the sum of $500.00, the opinion of the Ninth Circuit Court of Appeals that the claim, if any, is "de minimis" takes on its true perspective. This proposition is amply supported by the rule established in the federal courts that recovery is upon the bond, not independent of it, and thus is limited by the terms of the bond. Meyers v. Block, 120 U.S. 206 (1887), International L. Garment Workers Union v. Donnelly Garment Co. et al., 147 F.2d 246 (8th Cir. 1945), cert. den. 325 U.S. 852.

Petitioner relies upon the case of Houston & North Texas Motor Freight Lines vs. Local No. 745, Etc., 27 F.Supp. 262 (D.C. Tex. 1939) for the proposition that a party wrongfully enjoined could recover damages even if no bond were given. (Petition for Writ of Certiorari p. 15.) A careful reading of that case does not disclose such a holding. The court there merely stated by way of dictum that such may be the rule, but then went on to deny recovery.

Respondent submits that the limit of recovery is clear where a bond has been filed and where there is no allegation of malicious procurement of the injunction. Benz v. Compania Naviera Hidalgo, S.A., 205 F.2d 944 (9th Cir. 1953), cert. den. 346 U.S. 885, Jamaica Lodge 2188, Etc. v. Railway Express Agency, Inc., 200

F. Supp. 253 (D.C.N.Y. 1961). Respondent would urge, therefore, that the Ninth Circuit Court of Appeals correctly ruled that the matter was "de minimis" and that the damages, if any, suffered by petitioner are not such that a substantial stake prevails in the judgment.

III. NATIONAL LABOR POLICY IS ADVANCED RATHER THAN THWARTED BY THE DISMISSAL.

As petitioner correctly points out, national labor policy favors amicable settlement of labor disputes. United Steelworkers of America v. American Mfg. Co., 363 U.S. 564 (1960), United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960), United Steelworkers of America v. Enterprise Wheel & Car Corporation, 363 U.S. 593 (1960). The current litigation began on March 12, 1969, as a dispute over initiation and implementation of a "Ready-Fare Plan". By reason of agreement between the parties, that "Ready-Fare Plan" has been fully operational in San Diego since April 27, 1969. Regardless of the basic assertions that the petitioner Union failed to file a grievance or that respondent San Diego Transit Corporation failed to bargain collectively, it would seem that the real dispute has long since passed and that national labor policy and industrial peace would best be served by declining to continue the dispute at this late date. Contrary to the position of petitioner, such an approach would not force parties to decline to settle labor disputes in order to protect their legal rights, since parties who are conducting themselves in good faith with a view toward amicable adjustment of disputes are presumably more interested in reaching a mutually

satisfactory settlement than in preserving their "legal rights" for further and further litigation.

CONCLUSION

The dismissal entered by the United States Court of Appeals for the Ninth Circuit does not create a conflict with applicable decisions of this Court, nor did that dismissal constitute a substantial departure by a lower court calling for exercise of this Court's supervisory powers. Further, national labor policy and industrial peace would be promoted by putting this dispute finally to rest. Based upon these premises, respondent San Diego Transit Corporation urges this Honorable Court to deny the Petition for Writ of Certiorari.

Respectfully submitted,

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